A.F.R

HIGH COURT OF CHHATTISGARH: BILASPUR
S.B. HON'BLE SHRI VIJAY KUMAR SHRIVASTAVA, J
CIVIL REVISION NO.61/2006

Tenant/Applicant	Dr Pradeep Balvandere S/o Shri NM Balvandre, aged about 45 years R/o Shrinagar, Khamtarai Raipur, Dist-Raipur(CG)
	Versus
Landlord/Respondent	Smt Kundu Bai Mishra W/o Late Shri Mishri Lal Mishra R/o Mishra Complex Bhanpuri Tahsil & Dist - Raipur

PRESENT:

Shri Goutam Bhaduri, counsel for the applicant.

Shri Sanjay S Agrawal, Counsel for the respondent.

ORDER

(Passed on 7th November, 2006)

This revision under Section 23-E of the Chhattisgarh Accommodation Control Act, 1961 (henceforth "the Act") has been filed by the tenant/applicant challenging the propriety, illegality and correctness of the impugned order dated 01.03.2006 passed by Rent Controlling Authority, Raipur (henceforth "the Authority") in case No.9-90(8) 2004-05, whereby order of eviction has been passed in favour of the landlord/respondent.

2) Fact material for disposal of this revision as unfolded before the Authority is that the respondent claiming herself to be the landlord in accordance with Section 23-J of the Act, filed an application under Section 23-A of the Act for recovery of possession of the suit accommodation, averring that the suit accommodation is required bonafide for starting business of her major son Kamlesh Kumar and she has no other suitable alternative accommodation available in the city. Applicant/ tenant was served with notice in accordance Section 23-C of the Act. Admittedly, notice was served on the tenant/applicant, but he did not file any application for grant of leave to contest the application filed by the landlord/respondent for recovery of the possession of the suit accommodation. His defence was struck off by the Authority vide order dated 06.02.2006. Thereafter statement of Kamlesh Kumar was recorded by the Authority and the impugned order of eviction against the applicant has been passed.

3) Learned counsel for the applicant contended that the Authority did not pass any order of eviction under Section 23-C of the Act, therefore, the impugned order passed on the basis of evidence of attorney Kamlesh Kumar in absence of oral statement of landlord Smt Kundubai is illegal. He further contended that the attorney on behalf of the landlord is not competent to prove the case

of landlord and in absence of statement of Kundubai, adverse inference should have been drawn against her. In order to support his contention, he relied on judgments rendered by Hon'ble Apex Court in ***Vidhyadhar Vs Mankikrao and another*** reported in ***AIR 1999 SC 1441*** and judgment rendered in ***Janki Vashdeo Bhojwani and another Vs Indusind Bank Limited and others*** reported in ***AIR SCW 2004 7064***. On the contrary, learned counsel for the landlord/respondent contended that the Authority has not only passed the order on evidence adduced by landlord, but also took shelter of the provisions as envisaged under Sections 23-C and 23-D(3) of the Act.

4) For reference, 23-C and 23-D of the Act are reproduced as below :

> **23-C : Tenant not entitled to contest except certain circumstances** -- (1) The tenant on whom the summons is served in the form specified in the Second Schedule shall not contest the prayer for eviction from the accommodation unless he filed within fifteen days from the date of service of the summons, an application supported by an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Rent Controlling Authority as hereinafter provided, and in default of his appearance in pursuance of the summons or in default of his obtaining such leave, or if such leave is refused, the statement made by the landlord in the application for eviction shall be deemed to be admitted by tenant. The Rent Controlling Authority shall in such a case pass an order of eviction of the tenant from the accommodation :

Provided that the Rent Controlling Authority may, for sufficient cause shown by the tenant, excuse the delay of the tenant in entering appearance or in applying for leave to defend the application for eviction and where '*ex-parte*' order has been passed may set it aside.

(2) The Rent Controlling Authority shall, within one month of the date of receipt of application, give to the tenant, if necessary leave to contest the application, if the application supported by an affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the accommodation on the ground specified in Section 23-A.

23-D. Procedure to be followed by Rent Controlling Authority or grant of leave to tenant to contest -- (1) Where leaves is granted to the tenant to contest the application, the Rent Controlling Authority shall commence the hearing of the application as early as practicable and decide the same, as far as may be, within six months of the order of granting of leave to the tenant to contest application.

(2) The Rent Controlling Authority shall, while holding an enquiry in a proceeding to which this Chapter applies, follow as far as practicable, the practice and procedure of a Court of Small Causes including the recording of evidence under the Provincial Small Cause Courts Act, 1887 (IX of 1887). The Rent Controlling Authority shall as far as possible, proceed with the hearing of the application from day to day.

(3) In respect of an application by a landlord it shall be presumed, unless the contrary is proved, the requirement by the landlord with reference to clause (a) or clause (b), as the case may be of section 23-A is *bona fide*.

(58)

5) When defendant fails to specifically deny the allegations of the plaint, the Court is empowered under C.P.C., leaving certain exceptions to pass judgment against the defendant. The relevant provision envisaged under Order VIII Rule 5 of the CPC is reproduced herein below:

> "5. Specific denial.- [(1)] Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability :
>
> Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.
>
> [(2) Where the defendant has not filed a pleading, it shall be lawful for the Court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the Court may, in its discretion, require any such fact to be proved.
>
> (3) In exercising its discretion under the proviso to sub-rule (1) or under sub-rule (2), the Court shall have due regard to the fact whether the defendant could have, or has, engaged a pleader.
>
> (4) Whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and such decree shall bear the date on which the judgment was pronounced."

6) Landlord averring that tenant/applicant Dr.Pradeep Balvadri has stopped paying rent since May 2003, she bona-fide require the suit accommodation for business of her elder son Kamlesh Kumar, and she

has no other reasonable accommodation in her possession in Raipur city, filed the application duly verified and supported with an affidavit for recovery of possession of the suit accommodation. Admittedly, she was landlord in accordance with Section 23-J of the Act. The Authority in accordance with Section 23-C of the Act, in proper form served the summons on tenant/applicant. He did not file any application for obtaining leave to contest the application filed by the landlord for eviction within the prescribed period or thereafter, till disposal of the case.

7) Under Section 23-C of the Act in absence of leave to contest, there is a deeming clause that the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant/applicant, and it is obligatory on the part of the Authority to pass order of eviction. Under provision of Section 23-D of the Act unless contrary is proved it is to be presumed that the requirement of the landlord/respondent with reference to clause (a) or (b) as the case may be of Section 23-A is bona-fide. Neither Section 23-C nor 23-D of the Act imposes any condition or limitation restricting the Authority to exercise its jurisdiction and power in accordance with the presumption clause and deeming clause. Even under Order VIII Rule 5 of the C.P.C., the Court if did not call any particular fact to be

proved by the party is competent to act upon the deeming provisions contemplated therein.

8) No doubt the power of Attorney holder cannot depose the fact which are not within his knowledge, and is not competent to prove those facts, which are within exclusive knowledge of the landlord. But when law itself provides that in the absence of leave to contest, statement of petition itself shall be treated to be admitted by the tenant and in absence of contrary to be proved presumption regarding bona-fide requirement is to be drawn in favour of the applicant/landlord, the absence of evidence of landlord who did not enter as a witness in witness box does not in any way affect her right adversely in obtaining the order of eviction. So far as drawing adverse inference on non-examination of landlord is concerned, it is not permissible as legislature itself has laid the law, providing deeming clause and presumption, in favour of the landlord.

9) The Authority vide order dated 06.02.2006 struck of the defence of tenant/applicant and posted the case for 10.02.2006 for recording the evidence of landlord and on that date tenant/applicant did not appear before the Authority and in his absence the statement of Attorney Kamlesh Kumar was recorded when tenant/applicant was not present, the question of dis-allowing him to cross-examine the witness does not arise.

10) Here, in the instant case, the Authority to pass the order, not only relied on the statement of Kamlesh Kumar, son of the landlord Smt Kundubai but also invoked the deeming provision of Section 23-C of the Act. Therefore, so far eviction part of the order is concerned it is in accordance with the deeming clause and presumption clause as contemplated under Section 23-C and 23-D of the Act.

10) The accommodation is a commercial one; therefore, landlord is entitled to take possession only if she pays to the tenant double the amount of annual standard rent of the accommodation. So far the order of eviction is concerned, that does not suffer from any infirmity, therefore, the impugned order is sustained with modification that respondent/landlord shall pay double the amount of annual rent i.e. Rs.48,000/- (Rupees forty eight thousand) to tenant/applicant and thereafter expiration of a period of two months, she will be entitled for recovery of possession of the suit accommodation, accordingly, applicant/tenant shall vacate and deliver vacant possession of the suit accommodation to the landlord/respondent.

12) Parties to bear their own cost.

Sd/-
V.K.Shrivastava
Judge

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